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"SO YOU WANT TO START A SENTENCING COMMISSION?"

Mike Connelly, Ph.D. Kim Hunt, Ph.D.

PART I OF A MULTI-PART SERIES.

With California, Colorado, New Zealand, and who knows who else considering starting a sentencing commission, we thought we might do our part to help, imparting our vast and hard-earned experience to others so they can avoid our mistakes, or make them better. What we'll be doing over several coming posts is to bring them and you some of the key things they should think about, and not think about. We'll get them posted together over on the side for easy integration so you can read in bigger chunks or all at one time when we're finished. We invite your comments and questions in the comments or by e-mail (we're easy to find, at least by that Nigerian prince). And most of all, we hope they help in making the decisions to start or not and, if "start," to minimize the wear and tear and aches and pains.

And in promoting a broader discussion of points and advice made among all of us.

Let's get started.

Introduction

States have considered creation of sentencing commissions for over a quarter century now. Some of the earliest, such as in Pennsylvania and Minnesota, are still around and functioning. Others in the early group eventually disappeared (Wisconsin) or reconfigured (Oregon). More recently, states such as North Carolina, Kansas, and Utah have developed effective commissions while others (Maryland, Oklahoma) exist but play slight policy roles and some like Michigan and Massachusetts have to fight off extinction (MA succeeded, MI did not). Meanwhile, New Mexico, the District of Columbia, and Alabama get air under their wings, and Wisconsin starts again and looks headed for a repeat of its first effort. These commissions have tended to reaffirm the perceived role of states as "laboratories" for governmental policy and structures. Most of the states have both sentencing commissions and structured sentencing, in which sentence ranges for particular offenses and offenders are proposed. Most of those states

structure their proposed sentences in matrix form, like mileage carts in maps from one city to another. Find your offense on the left, your type of offender (usually based on prior convictions and other factors) on the top and move your finger across and down to the cell with the recommended sentence range in it. But some states have commissions without guidelines (Oklahoma), while others use narratives rather than matrices (Ohio until recently shot down) and may not have commissions at all (Alaska).

Despite all this activity and variety, the majority of states still do not have either commissions or guidelines. If you are reading this, the odds are good that you are from one of those states and are considering changing that situation. There are plenty of people to advise you besides us. The small fraternity that is sentencing commissions has tended to be unusually helpful and reciprocating for those who seek assistance. The academic community has noted scholars such as Michael Tonry, James Austin, Kevin Reitz, and Richard Frase who have provided advice for almost two decades now. And the Vera Institute has a well-regarded program of technical assistance with professional and practitioner resources on call, plus an excellent website.

So why are we posting this? Because, between the two of us, we have been in at the beginning of five sentencing commissions and know a lot of things now that we wish we had known then. We both have very similar backgrounds in sentencing and even some overlap. Kim Hunt, Ph.D. in political science from the University of Kansas, started as research director for the fledgling Virginia Sentencing Commission and moved on to direct the Maryland Commission on Criminal Sentencing Policy, a study commission investigating Maryland sentencing practice and recommending changes in the state system. From there, he became executive director of the District of Columbia's Advisory Commission on Sentencing.

Mike Connelly, Ph.D. in political science from the University of Missouri, began his sentencing career as research director for the Oklahoma Criminal Justice Resource Center, which staffed that state's fledgling sentencing commission. He later directed Maryland's State Commission on Criminal Sentencing Policy, which had been proposed

by Kim's study commission, and became executive director of Wisconsin's latest sentencing commission before becoming adminstrator of evaluation and analysis for the Oklahoma Department of Corrections. Between them they have over two decades of experience in setting up and successfully operating sentencing commissions.

While they may not have yet "seen it all," they have seen enough to keep you from their mistakes and to set you free to make your own. Starting a sentencing commission is not like assembling a bike, or, if it is, the bikes thus far assembled are an odd collection. But, just as bikes may look different but will have many of the same basics (and have to have a few exacts), so too will commissions. The environment you're in and the expectation you're operating under might not quite match what we've experienced, but much of it will just be variations on themes we've already played.

We've been in periods of prison boom and resources bust. We've worked with governments with legislatures and governor the same party and different parties. We've had judges support us and oppose us. We've had consensus commissions and factionalized commissions. One of us has even had to answer at least in part to the federal government as well as the usual jurisdiction. We both worked in partnership with a university. We've operated on various combinations of general revenues and federal dollars. We've had staffs of up to a dozen and as few as two. We've done risk assessment, population projections, fiscal impact analyses, legislative testimony, guidelines training, and even taken out our own trash. We know most of how commissions are different and most of how they're the same. We think we have something to share of value to those facing situations we've faced and to those who have no idea what they're facing.

If we haven't lost you so far, we think you'll be interested in the series of posts we have coming. And maybe even find some it enjoyable. So welcome aboard. And make sure your seatbelt is fastened securely.

posted by Michael Connelly at 4:30 PM

PART II OF A SERIES TO ASSIST THOSE CONSIDERING CREATION OF A SENTENCING COMMISSION.

Why a Sentencing Commission?

It's a legitimate question, and, given the path a positive answer will put you on, you should think it through clearly before committing. Initially, many states that started commissions in the 1980s were caught up in what could have been seen as a trend sweeping academic and practicing criminal justice, mainly motivated by sentencing disparity but also in the thrall of itself as a reform movement. By the 1990s the newness had worn off, but the desperate search for ideas to fight crime while controlling costs led many to more elaborate variations on the initial efforts.

Today, while commissions do still fail or find original intents besieged, the institution has gained acceptance and legitimacy, with some states like Wisconsin even reconstituting abolished commissions in the face of skyrocketing incarceration rates. So why are you interested in starting a sentencing commission? If you're like most prior investigators, your answer will likely be one or more of the following. (You will find that, while each of these purposes may be worthy, experience shows that their foundations are not quite as firm as you may initially think.)

Sentencing disparity—Let's say that essentially the same offenders in some jurisdictions of your state get different sentences, higher or lower, than in other jurisdictions when they have committed essentially the same offense. Is it because of different caseload pressures? Racial bias? Gender preferences? Incompetence? Cultural differences among the jurisdictions? Whatever the reason, your state may have decided that the interests of equal justice call for more uniformity and standardization of your sentences. Concerns like these are what tend to draw liberals into the commission/guideline camp and have drawn more interest of leaders of minorities in recent years. Requiring set sentences and allowing consideration of only a few factors relevant to the case (number of prior convictions, vulnerability of the victim, weapon usage, etc.) can in theory, and sometimes in practice (at least until the court participants can figure out how to game the system to get the result they want), provide similar penalties for offenders similar

on the highly restricted variables considered and committing similar offenses. However, too much structuring and eliminating of relevant factors can produce uniformity at the expense of real differences in cases and thus at the expense of justice. Still, a system in which two identical offenders with the same offenses may get probation for one and ten years for another has problems that cut to the essence of equal justice and social legitimacy. Commissions must monitor practices and guidelines closely and well to control for both types of injustice. Mandatory guidelines are often promoted to ensure greater uniformity, but voluntary guidelines, accepted by the judges and well-policed by the commission, can have similar effects without incurring judicial displeasure at loss of discretion or without structuring real differences out of consideration. The biggest problem with trying to control disparity at sentencing is that, like most of the things we do in criminal justice, we get it bass-ackwards (think about it—we generally wait until someone is a crime victim before the system leaps into action, we pump money into adult offenders when the biggest payoff in crime reduction is with children and juveniles, our drug "war" waits for people to become users, etc., etc., etc.). Unless you've seen something the authors haven't proving that judges are more biased than police or prosecutors, then waiting until after someone's been named, arrested, charged, and tried to root out any prejudice in the process against them is very much like your obsession with Brad Pitt or Salma Hayek (we'll discuss those later in private). Judges might, in fact, be able to correct for a bit of systemic discrimination at sentencing, but they're essentially food critics writing about a meal that's already been prepared. Actually, moving to quidelines will likely institutionalize many biases existing at these other levels since they shift the locus of control over the case. So, since so many sentences are based on plea bargains, arrest patterns, charging decisions, and pre-sentence investigation reports, if you want to get at disparity of sentencing treatment, at least start at those points, then see what you have left before you dump it all on judges.

Prediction and control of correctional costs—Correctional costs can be and frequently are the great Hoovers of public budgets. As any economist will smugly tell you, every dollar devoted to one purpose is an opportunity cost (loss) for other uses of that dollar. In expansive economies and budget times, like the late 1990s, there

were enough dollars from other places to offset that loss. In restrictive economies and budget times, education, health care, economic development, roads and bridges, and other important public services, with victims and safety issues just as real as in criminal justice (wanna eat that burger after health inspections are cut?), feel the air rushing away as prisons vacuum up every free dollar, and some thought to have been well pinned down. How communities are to create favorable conditions for the business development and economic growth that stifle much future criminal activity (although, be honestmore economic opportunity also creates more crime targets) when dollars are sucked into prisons has never been made completely clear to those not chanting "Do the crime, do the time." The more immediate problem from a criminal justice perspective is that those dollars are usually being pulled away from other areas of criminal justice as well. Every dollar spent locking them up and throwing away their key is a dollar unavailable to catch them, prosecute them, and convict them in the first place, not to mention the efforts in juvenile justice where the biggest long-term bang for the buck can be found. If you send one away for twice as long but three more walk free because you couldn't nail them, what good have you really done public safety and reduction of crime victims? If you increase punishment severity at the expense of punishment certainty, tell us again how that deters anybody?

Faced with demands and duties of fiscal responsibility, policymakers dealing with filling prisons try many short-term fixes—caps on prison populations and early release when caps are exceeded, increased "good time" for those near release, more paroles—all offenders being first-time, non-violent, of course (man, is *this* a can of worms). Another common, longer-term remedy is to develop sentencing guidelines, or structured sentencing, to identify reasonable risks for alternative, cheaper (although not always that much cheaper) punishments than prison.

Moving to a grid system with mandatory or well-monitored voluntary guidelines can siphon away substantial numbers of offenders who, back in the day, would have gone to prison. And, if past trends of offender intake (new crimes and revocations, always remember the revocations) and offense distribution hold true and allow statistical modeling (from

average annual percentage increments to simple regression lines to elaborate stochastic modeling, which, if you don't know what "stochastic" means, you shouldn't try this at home), you can project very closely how many offenders will be affected. Some states require that, based on projections, their commissions have to warn policymakers of coming prison space problems in advance and even make recommendations for how to avert them.

On Planet Reality, however, there are a few problems with this cost-prediction and – control function. For one thing, what if trends don't hold true? What if the next Len Bias dies from the next innovation in pharmaceuticals and overnight both crime and hysteria make past behavior irrelevant? Think of this—isn't the whole point of changing policy to change the trends, which then reduces their effectiveness for future prediction until new stats come in? Another one—what makes you think having new sentencing alternatives won't pull as many people away from low-cost probation as from high-cost prison ("net-widening")? If you're a D.A. and you couldn't justify a prison recommendation for this low-life, wouldn't some additional new sanctions look good as add-ons to the probation you're normally left with?

And say trends do continue and you manage to divert only formerly prison-bound. Now you've got prison bedspace back under control, maybe even a surplus, especially if you've been building a new one or two annually. How do you know that your probation and parole officers won't see those beds and decide to revoke offenders to prison on technical violations they used to have to put up with whenthere wasn't bedspace? This is a major problem as well when projections are used to justify prison expansion, which magically fills up before predicted because, it turns out, "if you build it, they will revoke."

Finally, on a more epistemological level (sorry, won't use those words often), say your commission does institute guidelines in an effort to reduce and divert admissions to prison. A couple of years later, sure enough, your prison population is down, or growing at an obviously lower rate. Success of your policy change? Or simply all system participants recognizing the need to cut back on use of prisons, that mindset leading to many other and perhaps less obvious actions than implementing your guidelines. Scientifically, it would be hard to

determine, and simply comparing yourself to similar states that didn't implement guidelines doesn't solve the problem. (Think about it.) So, does that mean that you shouldn't look at commissions and guidelines if you are trying to get or keep your correctional costs under control? No, just that you should be aware of the limitations and alternative interpretations. Guidelines are one of many instruments on your control panel that can be used to monitor and channel sentencing policy, especially if your commission has mastered data collection and reporting. But a lot of the states that "got their intake under control" have nevertheless under-built or over-built prisons based on their projections, and you can still hear the Hoovers droning on in the distance.

More on possible purposes for a commission in the next post. posted by Michael Connelly at 4:54 PM

PART III OF A SERIES. PART II BEGAN DISCUSSION OF THE REASONS READERS MIGHT WANT TO START A SENTENCING COMMISSION. FOR EARLIER PARTS CHECK THE LINKS ON THE RIGHT.

Control judges—Note that we don't say "control judicial discretion," as is usual. That's putting a dress on a pig. The point of this function of commissions and even of voluntary guidelines is to send a statement to judges (usually by power-seeking executives or legislators) that "we don't like your sentences, we don't trust you to police and improve yourselves, and we don't want you to step outside this box." Some systems, of course, are more devoted to this cause (see Sentencing Commission, Federal, pre-Booker, and maybe post), but even voluntary systems are saying this, with a bit more of a smile and even tolerance. Even judges who support commissions and guidelines will overtly admit that some of their colleagues give "unique" sentences (the speakers themselves, however, are always models of sentencing practice). In fact, when sentences show the disparity and nonuniformity we've noted across a state or seem to be the result of the nature of the judge's day or age to that point, it is clear that questions about the need to control will arise. The authors' experiences with judges, on the whole, have been very positive, but those called imperious, arbitrary, and weird do exist in too great numbers. And, like all professions, the judiciary is loath to police its members, partly out of respect for each other, partly out of the fear of what admission that they could be wrong might lead to. Ideally, judges would create their own guidelines, monitor their data, inform and educate their members, police the outliers, and minimize the disparity and any outlandishness that might be occurring. Ideally, there would be no crimes to try, and we wouldn't need judges at all.

So, assuming there are defensible reasons to restrain judicial sentencing, at least in part, how far do you go and who should actually do it? Commissions and guidelines developed and supported by respected judges are your best bet. They don't guarantee judicial acceptance, but a lack of meaningful judicial input leads to destructive confrontations and dysfunctional systems like the federal one that has satirized just and reasoned sentencing. Yes, some judges

may protest that they're being asked to put on their own velvet handcuffs, but, if it's gotten to the point in your state that you're going to do commissions and guidelines, the handcuffs will be velvet and self-administered or steel and rigidly imposed.

Judges have to understand in those circumstances that cooperation, strategically given and maintained, can lead to greater flexibility and discretion and can avert not just mandatory guidelines but mandatory sentences as a whole. Guidelines themselves have not been ruled unconstitutional. No matter how much guidelines insert executive and legislative prerogatives into the judicial function and separation of powers, a very legitimate fear and complaint of judges, your judiciary will lose the political battle if its warriors want to take it all the way. Martyrs are spoken well of sometimes in history, but self-sacrifice won't temper the here and now. Politically astute judges do exist. In my experience, they're rare, but they do. Find them and work with them to get the best deal for everyone.

Improve sentencing data and knowledge—Big Brother may happen. But not soon. Not if current criminal justice data are any evidence. The old saying has it that people should never see their laws or sausages being made—add criminal justice data to that list. Here's why. Think of all the reported crimes and the level of training, experience, education, and longevity of those reporting and those recording the reports. Now factor in different procedures, formats, definitions, and, these days, hardware and software, and calculate how well systems will talk to or compare to each other. Now think about the original purposes for which those data were collected. Usually managerial, usually for internal consumption only. Now stir in outsiders—policymakers, news media, advocacy groups—who want a statistical picture of their particular criminal justice concern. Will they define terms, concepts, figures the same way? Will they understand the parameters within which the numbers have been gathered, the gaps and guesses in many of the aggregated values given? Will their reports and conclusions based on those data parallel what the practitioners would have found and interpreted? Pity the poor policymaker. Consider, as a common example, "recidivism." Presumably knowing how often offenders "corrected" by our criminal justice process fail and return to that system is a major step toward

understanding the effectiveness of that process in protecting public safety. But what do we mean by "failure," or even "return"? Do we judge failure as technical violations of probation or parole conditions or as new offenses? If new offenses, do we judge by rearrest, reconviction, return to prison as opposed to probation or alternative sentences? What time frame do we use? One year? Three? Five? Ten? Lifetime? Given all the possible answers, depending on the goals for the use of the data, it's conceivable to have dozens of versions of "recidivism" up for debate before anyone can even think of moving on to actual policymaking. "Time served" (another concept popular with policymakers) for murder is usually low, just a few years, which inevitably leads to howls by Bizzaro World brainiacs.

Why is it low? Because not all that many murderers get out of prison before they die, intentionally or not. The ones who do are usually released by pardons or commutations, sometimes proof of innocence. These shorter sentences averaged together make for less than what we "expect" a murderer to serve. Hence, the howls, which nevertheless seldom go down proportionately to the rationality of this answer. And recidivism and time served aren't the only conceptual problem children.

Policymakers rarely make clear what this "public safety" they demand is. No crime at all? Fearlessness in one's own neighborhood? (They had that in the Soviet Union. No, thank you.) Immediate response to offenses that do occur? How about "crime" itself? Is it best measured by crime rates (those crimes reported among all the ones that go unreported), arrests (dependent on victim calls and law enforcement activity), victim surveys (self-reports by people unaware they were victimized or afraid it might happen again), law enforcement expenditures (more or fewer dollars when crime is up or when crime is down?), public polls of perceived crime (on tv or in reality?)? One of the sad truths of law enforcement is that a police department or sheriff's office known for real competence will get more crime reports than one known to be staffed by Moe, Curly, and Larry, and thus have higher crime rates. (So move to a town with really HIGH crime rates.) So. What do you do? How do you decide on common definitions, standardized collection and reporting, nonpartisan research and interpretation? One way is to empanel representatives of the entire

process who will oversee data development and work for consensus on its application and promulgation. A panel that would look amazingly like the usual membership of a sentencing commission.

Granted, a commission can't solve all the problems, but it certainly can, as an observer made objective by its multiple members, develop its own data base as a foundation for policy related in any way to sentencing and as a comparison with the data of more partisan agencies more directly affected by data and their interpretation and reporting. While this function is usually only secondarily promoted as a reason for having a commission, in truth, it may be as important as anything a commission does. Which means you should take care to protect the nonpartisan cast of this function. Individual commissioners with partisan agendas are not above trying to tamper with analysts or to challenge their integrity if they do not conform to that commissioner's selective use and interpretation of data. They are also known to seek external counter-data and -analysis to undermine a neutral system not going their way. While staff have some responsibility for demonstrating their trustworthiness and competency, it is incumbent on other commissioners, especially the chair, to defend their staff unless and until they are shown to abuse that trust. Commissioners who taint the staff's analysis for political purposes ultimately weaken the commission itself. Commissioners must hire topflight analysts, ask intelligent questions about their work, make clear where more work is needed, but also fight off "my way or highway" commissioners who, through active or passive aggression, can take everyone down if tolerance of their misbehavior overcomes sense. (This isn't the last you'll hear of this.)

But it's the last you'll hear in this part. Part IV soon. posted by Michael Connelly at 2:58 AM

PART IV OF A SERIES. THE PREVIOUS TWO PARTS DISCUSSED REASONS FOR CREATING A SENTENCING COMMISSION. THIS POST FINISHES THAT SECTION OF THE SERIES.

Improve policy decisions—Obviously, this ties into the previous function, but it goes beyond, to the stage at which the commissioners, representing their cross-section of the criminal justice process, actually apply the data. Are certain types of offenders less likely to recidivate (as defined authoritatively by the commission) when sentenced to probation, prison, or alternative sanctions? If probation or prison are the only options, how long is necessary to have the effect? If alternative sanctions are available and used, which of the many out there? Or, another possibility, does it make a difference in sentencing if the crime victim gives an impact statement or not? If so, harder or lesser sentences? Sometimes harder, sometimes lesser? Why? Do oral statements have a bigger impact than written? If they do, what is the "due process" thing to do? Without the data and accompanying analysis possible with sentencing commissions, these kinds of questions are answered in the dark, if they are answered at all. Often, too often, policy gets based on untested hypotheses or untethered hyperbole. If agents of the process get into arguments over responsibility or blame for problems (for example, are increasing weapons offenses due to incompetent policing, slack prosecution, bleeding-heart judges, Paris Hilton, what?), the policy results can be based on which group has the most political power or best media strategy, not on reality. Something is needed to bring realism to the chaos.

That something can be your sentencing commission. Again, composed of a representative cross-section of the process, a commission in consensus can pull together views, constituencies, and interests into a framework backed by professionally produced data and research. It can give subsequent policy decisions (and no-decisions) legitimacy and credibility lacking in a free-for-all among process participants. And this goes beyond the usual policy concerns like cost-effectiveness of sanctions or means to funnel proper offenders into treatment. IF in consensus and If with effective leadership, a sentencing commission can bring focus, purpose, and action to a wide range of policy problems that would otherwise go unresolved. Another less commonly

emphasized but ultimately greatly valuable function.

Change existing sentences and sentencing practices—This is more than the "disparity" issue discussed earlier. What are your goals for sentencing in your state? Deterrence? Of the offenders? Of wannabes or might-bes? Incapacitation? Retribution? Rehab? Are your sentences considered just? Based on the appropriate punishment for the offense? Or for the offender (serial killer or abused wife, firsttime offender or career criminal?) Who are your top priorities for prison? Sexual abusers? Other violent types? Druggies? Habitual offenders with no rehabilitation shown? Anybody who breaks a law, regardless of the offense? Your cousins like those folks in "My Name Is Earl"? Too often sentencing practice is an incremental evolution with any or all of the goals and considerations of justice at play. Forming a sentencing commission can give you a chance to decide what you want and to keep your eyes regularly focused on how well you're doing.

On a more direct and practical level, sometimes long-held sentences and sentencing practices come under question. Multiple DUI convictions without serious treatment or jailtime may pass unnoticed until the collision with the church bus. Parental spanking of their children may now be called abuse. More use of "The Club" may force car thieves to wait until cars are started and ready to move—carjacking, never a big problem when cars could be taken stationary, suddenly requires action. One more—if you can pick up the basics for your meth lab at WalMart, should store managers be held accountable for selling to suspicious types, like merchants selling beer or cigarettes to minors? Should record checks be required? A body of criminal justice practitioners tasked with dealing with sentencing can bring insight and guidance to policymakers otherwise tempted by the first bumper sticker they see. (You won't see "task" used as a verb again, we promise.)

No commission can stop a set of policymakers and/or advocacy groups determinedly bound for stupidity. The history of mandatory minimum sentences and their poor long-term cost-effectiveness is proof of that. If "by God, we'll show you, you SO_, d#*! the costs" is your guiding sentencing philosophy (which actually has academic support in some quarters), then you should give up planning a commission. You can do that without wasting your money on one. But, if you're at a point at which you're seriously considering it, then the environment would likely

support at least somewhat a commission that sets standards and goals and reviews possible corrections to sentences that no longer seem appropriate. Stupidity will almost

certainly still raise its proud head occasionally, but legitimate, credible commissioners have shown the ability to channel consideration into reasonable channels.

Buffer policymakers—This is clearly related to the previous function. Commissions in general have always been conspicuously valuable to policymakers who want to shunt controversial and/or merely complex matters that can't be avoided off to somewhere "official" where the heads that end up rolling won't be theirs. Sentencing commissions can and do play that role in sentencing policy. Public outraged over a well-publicized crime or a sense of lawlessness? Some local demagogue getting signatures for a voters' initiative? Don't want to raise taxes to pay for more prisons if you vote for tougher sentences but don't want to lower sentences or release inmates to get prison populations down to constitutional or historical levels? Sounds like a job for . . . a sentencing commission!!!

Obviously, commissions are not themselves immune from public outrage or demagogic fun. But, a commission in consensus and composed of a broad and respected cross-section of the criminal justice process has resources beyond data and analysis to guide debate and action into reasonable and reasoned channels. Political history has shown that nothing can stop a bad idea whose time has come, especially in criminal justice policymaking, but a well-regarded commission properly doing its job can give cover and thus courage to policymakers wanting to do the right thing but needing a little protection. So the benefit, while marginal, is real. If you can't put a body like this together, once again you may as well give up the commission idea. A spineless and/or dithering commission is worse than no commission at all.

Which leads us to . . .

Ah, that's Part V. We're already resorting to cliffhangers!! posted by Michael Connelly at 3:48 AM

PART V OF A SERIES. THE LAST PART FINISHED THE SECTION ON THE REASONS TO HAVE A SENTENCING COMMISSION.

What Do You Need for a Good Commission?

Composition Clearly the commission as a whole is most important. A good one usually, but not always (due to politics), will consist of representatives across the state's criminal justice process and political parties. This means, as a rule:

Judges who actually try cases and sentence, although an appellate judge is often good if you can find one willing and with the time

Legislators, at least one from each party, but only ones with real influence, such as committee or subcommittee chairs or ranking minority members, not bloviators or about-to-be-retireds

At least one **prosecutor** and, preferably, someone from your Attorney General's office involved in criminal justice appellate work

At least one **defense attorney**, either public defender or private bar (although the latter may have more problems scheduling—the former are usually ordered to attend to prevent prosecutor mischief, if nothing else).

Prison and jail officials, from your state corrections folks and from county facilities, to inhale sharply when proposals to double existing penalties or to make half the criminal code mandatory-minimums are offered (and to speak to issues of costs, housing, treatment, etc.)

At least one **law enforcement official**, either state or local, ostensibly to give insight as to criminal behavior, policing strategies that affect what offenders get arrested for what offenses, and/or available data (and to tip the commission to "red flags" in its proposals from the standpoint of law enforcement).

At least one victims' representative, preferably of a broad

constituency of victims rather than specific subgroups (such as domestic violence, child abuse, murder victims, etc.) and of a broad perspective who realize that costing out vengeance usually depletes the resources necessary to prevent more victims in the future.

Assuming two judges and two legislators minimum, plus a chairperson, this gives you eleven commissioners, a decent size to manage. Going above this number risks consensus with each additional appointment and potentially increases logistical and informational costs. However, few commissions have limited themselves to eleven, more for political than efficiency reasons, so let's look at who else you can add. Many commissions are required to have "laypeople," general public representatives to provide the public's perspective. This actually is usually to give the governor, the attorney general, or chief justice more appointees and, in theory, more influence.

Experience has tended to find these "public" members turning out to be more judges, former prosecutors, and others in the criminal justice process. Commissions are more likely to benefit from these "at-large" appointees if they actually do represent external views, such as an academic with knowledge of research on sentencing and criminal justice policy in general, actual treatment providers, offenders' families (such as from Families Against Mandatory Minimums), and/or the business community (who are usually quite good at linking expenses to actual rather than dreamed-of-in-my-dogma payoffs). Retired news media types might also be a nice group to tap.

The problem with so many diverse appointees, of course, is that commissions can end up all trees (of different types) and no forest. The diversity brings expertise and networks as well as varied perspectives, but it may also bring paralysis if the "trees" don't get along or if each "tree" defers excessively to fellow trees' parochial perspectives. This is where effective leadership, from the chairperson and/or the executive director, is often the difference between effectiveness/impact and drift/irrelevance.

Consensus for the Public Interest

Which leads us to probably the most important factor in a good

commission once composition is successfully handled—a commitment to consensus and to pursuit of overall public welfare in policy versus pursuit of particular agendas of particular parties or constituencies. Although commissions are selected by constituency groups and must present those groups' perspectives, they must, repeat MUST, subordinate those groups' interests to the broader interests of reaching consensual sentencing policy. This does NOT mean selling out because an effective commission recognizes and balances the interests of the various constituencies represented on it. And commissioners who always "lose" on their constituency's positions probably should raise hell and even quit, unless their positions are so consistently hardline that they themselves are the problem. But, at the end of the day, if the commission carefully apportions "wins" and "losses" with an eye ultimately to best public policy, commissioners cannot make "total victory" for their causes and constituencies the end all of their participation. And, they cannot take defeats outside the commission for battle elsewhere. It's a careful and ambiguous line to follow, as it is for any work group composed of different elements, but the criterion should be policy which directs criminal punishments to meet the commission's determined purpose(s) at no more cost to taxpayers than absolutely necessary.

One of the best ways to develop or test consensus quickly (and to root out the hardliners early) is to have the commission write its own mission statement. Yes, too often mission statements have that "knowledge is good" quality we see on college web sites, but, if accompanied with actual objectives and products directly linked to the statement, they can force commissions early on to deal with many of the questions about purpose that we addressed before. Plus, the objectives and products allow accountability and charting of progress that prevent the wandering and paralysis that large groups of high status professionals from different backgrounds can blow their way into.

You don't necessarily need to go through a full strategic planning session to get a statement, objectives, and products; any competent staff can throw a draft together to frame commission consideration. It may cause argument and disruption early on for a new commission, and many might think it better to let commissioners get to

know and work with each other first to offset later contention. But that delay rarely overcomes stalwart fighters for their "causes," who might in fact use the "getting to know each other" to create an environment in which getting along overrides serious resistance to the fighters' preemption of the commission's public purpose. You should always beware of those who prey on personal and professional civility to pursue their or stall the commission's agenda.

And, without a mission statement, staff is left guideless as to priorities and what should be triaged, perhaps wasting significant time pursuing programs, proposals, etc., that get shot down later in disagreements that could have been expressed earlier in the commission. Admittedly, it's easier and less confrontational to put off addressing and cementing the commission's purpose(s), but it's almost always wishful thinking to believe differences will be magically resolved by delay. At some point, if you have commissioners committed to their own agendas and not the public's, then the conflict will come out and potentially paralyze and destroy. And don't forget that you're just talking about a mission statement, by definition a BROAD statement of purpose. If you have a commission that can't even agree on a mission statement, then you're in trouble from the start. And its opponents will be your "my way, highway" people on everything else of real importance to the commission.

Commission Chairperson

Much can be told about the level of commitment and support that a governor is giving a sentencing commission by whom s/he appoints to be its chair. (The same obviously holds for those named by some other appointing authority.) Because their cooperation is vital for legitimacy and efficient operation, judges (active or retired, if still ambulatory) make good choices as a sign of deference and as a way to shift bad outcomes onto the judiciary. Legislators or upper-level executive staff are not so good, unless they are long-term and bring real power to the position, since they tend to install a political perspective that may later be a liability. It's hard to think of any among the other usual appointees listed earlier who would have the legitimacy and political pull in sentencing policy to be a good choice. However, the particular nature of your state's politics may produce such a candidate. Maybe a very

well-known and highly regarded scholar. Bottom line—the choice has to be interested and political, knowledgeable and diplomatic, and a respected player in the process. (If no superior choices are available, just rotate the position among existing commissioners. That way you wouldn't be stuck with a lunatic too long.).

The chair is the point person for the leadership both internal and external that will be needed for commission success. That person should have and devote the time necessary to fight the battles, rally the troops, and convince the public. Of course, the people with those qualities are usually somewhat busy elsewhere. Nevertheless, getting someone without fire or drive, no matter how impressive the resume, will start your commission yards behind in the race. The chair needs to support and defend the staff from political and other unwarranted criticism and buffer them from efforts at undue influence. If the commission is in consensus, a chair with good mediating skills is best, to sort out the disagreements over details. If the commission is obstructed by the "my way" types, the chair needs to roll them. I've worked for chairs who did and who didn't. The one who did had a relatively successful commission; the ones who didn't, didn't.

Let's be clear about this because the fate of your whole commission can hang on it: if a constituency or its representatives on the commission threaten to undermine the commission or deny it and its initiatives support, the chair needs to move the commission forward to its goals anyway. Let those who try to block it be left on the outside looking in. I don't know many constituent groups that won't be back at the table quickly despite previous threats if the commission through its chair sticks to its guns. If they take the battle to the legislature or governor, then you'll find out quickly whether the commission will be a policy player or not. If the commission loses, scrap it. It's a wasteful and useless appendage. A chair who simply tries to ameliorate dissent by avoiding tough issues and actions leads a commission that will never get anything meaningful done. No commission ever pleases everyone. Waiting for that pleasure to happen is a recipe for inaction and failure.

Most commission issues won't come to that. Constituent groups don't fight over data collection or statistical reports, as a rule, which have become the major things commissions do. But data collection and reporting can be done by other agencies, like state court offices and/or DOCs, if that's all that's needed. Commissions are supposed to play policy roles, and they need to have strong, effective voices that are heeded as much as or more than the those of other constituencies. If you go back to the successes of state commissions such as MN or NC, you'll find an effective chair

will be that voice.

Directors and staff in Part VI posted by Michael Connelly at 4:10 PM PART VI OF A SERIES. THE LAST PART TALKED ABOUT WHAT WAS NEEDED FOR A GOOD COMMISSION, INCLUDING MEMBERSHIP AND CHAIR. THIS PART DEALS WITH DIRECTOR AND STAFF.

Executive Director

As mentioned, sometimes (rarely but sometimes) a well-respected commission director can substitute in most, if not all, areas for a poor commission chair. The pool of experienced sentencing commission directors with good, well-established reputations is similar in size to that of the blacksmith population—there but few in number. That said, someone meeting the criteria from another criminal justice board, commission, agency (or non-criminal justice if either reputation or experience is overwhelming) could fill the bill. Frequently, states will pull people from corrections, justice assistance, court administration, etc., to be their commission director. The risk, of course, is that they will be perceived as too connected to their prior base to be the impartial arbiter that the director is usually expected to be. (If you already have a commission, existing staff clearly may supply internal candidates, if they are not tainted by their links to the old director, if the parting was not pleasant.)

What qualifications should the executive director generally have? They should be carbon copies of your blog hosts here. However, as we are hard to find, let's list some of the basics. An advanced degree from a reputable institution is not a requirement for actual functioning, but it does add some glamour in a world of high-powered judges, attorneys, policymakers, and other mover/shakers. The editors both have Ph.D.'s in political science, but that's actually a little rare (discipline and, less so, degree). A J.D. will work and a good Master's in policy and/or administration is impressive enough, especially if followed with good management and political skills. But several good commission directors have been known to be smart enough to get out of higher ed with their Bachelor's and their minds intact.

Should they have previous sentencing experience, either with a commission or courts or elsewhere? It's helpful, but we're not talking rocket science or neurosurgery here. If their learning curve is steep and fast, this isn't as vital as a good general knowledge of policy and administration first and of criminal justice second. A sense of (and preferably actual experience with) data collection and reporting in criminal justice will prevent the shock and inertia that await virgins immersed for the first time into that statistical maelstrom. Depending on the expected extent of their involvement with other sentencing and criminal justice participants, the director's skills in diplomacy and political strategy may be important. (My boss in MD was impressed that I had served a couple of terms (not in prison) on a small-town school board, believing that only someone who had held himself before voters could understand how things worked as well as needed. I hope I didn't disappoint.)

As directors, they will have to perform all (or most of, if staff size is large enough for delegation) the basic management functions—planning, budgeting, hiring, procurement, state administrative rule compliance, grant administration (if applicable), etc. They must be able to testify before legislative committees, make presentations to the public (citizens, advocacy and professional groups), deal with the news media as well as other agencies and other commissions. They should be able to put together clear and thorough written and statistical reports (again, with delegation depending on staff size). They will have to get meetings planned, agendas set, materials produced, rooms (and maybe parking) reserved, etc., or oversee those who do. It might be nice if they occasionally have an original idea, but it's not a prerequisite. An established commission and staff generally have routines set for all this, but it takes a few months and meetings for a new commission to get those routines up and running. If you have questions, a call to an established commission or two should answer most of them (again, make use of the familial sentencing fraternity).

A good executive director of a sentencing commission is like a good director of anything. S/he handles day-to-day management in a way to please later auditors, keeps well informed on state politics as well as

sentencing issues, knows what is happening in other states and lets the commission know of possibly useful innovations for its state, communicates well and frequently with commissioners individually and as a whole, and always looks for ideas and means to do the commission's work and policymaking better. Hopefully, s/he will attract good staff and be effective in delegating to them to get work produced well and on time. S/he will develop a reputation for honesty, utility, and effectiveness among the relevant policymakers and practitioners and will not end up on the front page of the statewide newspaper (although an occasional article on page 8A is okay, usually).

Commission Staff

As indicated, a commission's executive director does not have to fit this description perfectly if s/he has a staff of adequate size and skill to offset deficiencies. The basic management rules the authors try to follow are: (1) hire good people, tell them what you want and when, hold them to that, and get out of their way, (2) hire people who are good at what you're not. The more people you have, the higher the list of your relative incompetencies you can check off.

What staff do you and your director need? Commission staffs range in size from one or two to double digits. A minimum of four to six are necessary to perform the usual tasks expected of commissions. Those with only a couple of staff have to throw themselves on the kindness of others (other related agencies and/or individual commissioners and their staffs) to provide cooperative assistance. It can work (one author has twice now started commissions with two people, the other has done it once), but it's the pits and to be avoided if possible. Otherwise, you can end up with your executive director entering data or dealing with problem orders from Boise Cascade. (They shouldn't be above it, but it's not considered cost-effective.) If you make the mistake of getting substantial work done with minimal staff, appropriators will never believe you need more people, but you can't count on that initial cooperative assistance to always be there. So triage what you get done and make the case early and often for more staff. It's admittedly a Catch-22—you have to get things done to show value to get decisionmakers to get you staff to get things done. Still, if you are one of those decisionmakers, reading this, you will get far more and better done for a longer period of time from adequate staff in

the beginning. Find the resources.

Whom do you need? Foremost, you need analysts, people who will take the sentencing data and information and produce reports for policymakers and the public. If your executive director can handle the report-writing and/or public presentations, then your analysts can be the stereotypical geeks growing pale and pasty at their desks. If the staff is small, chances are, however, that time and work demands will force the analysts into more overt roles, which they should be equipped to play. Again, Ph.D.'s aren't necessary, but bachelor's programs rarely prepare analysts well enough in statistics and other essentials. Such hirees can play lesser functions, such as data entry, basic statistical reporting, public liaison, etc., but your analysts should have Master's degrees in policy/administration or in criminal justice with good analytical requirements.

If you have the funding, a communications liaison to handle the public and media (reports, press releases, logistics of publications, etc.) is useful. An information technology specialist is also valuable, especially if you would otherwise have to rely on contractors or a host agency's people. Given the importance of a website these days, the IT person should be creative as well as capable in designing a useable as well as informative site. If your commission's offices are easily accessible to a college or university, some funding set aside for interns is nice. Undergrads can do data entry and basic report-writing (each carefully overseen by staff) while grad students from good programs can do more advanced research and statistical analysis and reporting. (And please be sure to credit them in your reports so they can take away a resume-addition.)

Other helpful staff, once you have these key positions adequately filled, would be an office manager and a grant writer/administrator. Don't spend on secretaries or receptionists until you cover these other areas. The work of a sentencing commission doesn't really require them since staff, including the executive director, can handle phone calls and the rare visitor. They're not too good for it.

On the topic of staff, mention must be made once again of the absolute

necessity of the staff's "neutral competence." Some policymakers love to misuse staff, to force them to agree to analyze problems or produce results with the preferred conclusions already set. Commissioners are not above biased analysis, either. As stated earlier, however, the long-term value of any staff is the integrity and trustworthiness of its work for all who use it, even the abusers. Bending staff work toward a predetermined agenda may work a time or two, but in the end misuse becomes known and staff become useless, even to the abusers. The chair and the executive director must buffer and protect the analysts from these ultimately debilitating pressures.

With a bipartisan commission composed of different branches and interests, this is not as big a problem as it is for more homogeneous and closed analyst offices, but an active commissioner seeking to thrust his/her agenda past others under the guise of "staff recommendations" has been known to happen. Do not let it. And do not choose chairs, executive directors, or staff who let it or who have their own axes to grind, crosses to bear, dogs in the hunt, [insert your own favorite cliché]. A commission known to slant and deceive deserves its inevitable reward.

What else is needed? Next part posted by Michael Connelly at 5:04 PM

PART VII OF A SERIES. EARLIER PARTS DISCUSSED INGREDIENTS OF A GOOD COMMISSION. THIS PART FINISHES THOSE CONSIDERATIONS.

Other Requirements for a Good Commission

A commission performing to its max will also have consistent, influential, and serious sponsors among the policymakers, adequate funding for its mission, and meaningful cooperation with the other agencies involved in sentencing (the usual suspects— courts, corrections, prosecutors, etc.—but also juvenile justice, schools, treatment providers, etc., as necessary). Often, a commission starts as an initiative of a policy entrepreneur, either a judge fed up with disparity or nonuniformity, a legislator pushing for stricter sentencing or less racial disparity, or someone in the governor's office staking out a policy turf. If these folks end up with the clout to get a commission going, they are clearly the kind of sponsors who can support and defend a commission politically and fiscally. To the extent that they are serious about making good policy as much as or more than making their names, they can help the commission establish its legitimacy and credibility in the process.

Commissions, however, cannot let themselves be too dependent on these key benefactors, or they may find themselves without help when the benefactor moves on, finds another interest, retires, visits the Great Beyond, etc. But lack of an influential sponsor will almost always commit a commission to influence purgatory in the policy arena, at least until some sentencing-related news story hits the front page. If the legislators appointed to a commission seem pro forma appointees or lesser lights or if the governor doesn't put upper echelon folks on it and require their actual attendance (instead of flunk . . ., er, proxies), you can tell from the beginning that the commission is more for show than go. Politically influential judges taking an active role is probably the best sign, if you have such creatures in your state, since they can pull an often skeptical judiciary along as well.

Adequate funding is the mantra of all government entities, good or bad, but it is particularly important for commissions. Most fall in that

netherland of "under \$1,000,000" which makes them seem insignificant and potentially irrelevant but nevertheless an easy chunk of change if budget cuts are necessary. And, if created at a time of fiscal shortage, the temptation to underfund from the beginning is usually overwhelming. There are ways for commissions to economize, some of which we will elaborate more on later. However, for those who can't wait, web sites can offset printing and mailing costs, making documents, forms, reports, etc., available online for user downloading (at their own expense). Partnerships and cost-sharing with other agencies can also defray costs. Hiring talented but low-cost grad students as part-time analysts can get two people for the price of one FTE (or at least three for the price of two), and getting undergrad interns for grunt work is even cheaper, especially if you can tap into programs in which courses and credit are the students' reward in lieu of actual pay. (Again, be sure to offer report credit for their resumes as compensation and as a moral salve for their exploi . . . , er, use.)

The problem, again, as mentioned above, is that, to the extent you use means such as these successfully to defray costs in the short-run as you accomplished the top of your triaged goals, funders tend to believe that you can accomplish ALL goals into the extended future with the SAME level of funding. So don't be shy about pointing out what ISN'T getting done or the difficulties of promising the same high levels of production in the future (if grad students and interns come to believe they're being misused, for example—which is why you don't misuse them in the first place). A staff of six should run between \$400,000-\$500,000, depending on the market, prorated for more or fewer authorized employees but recognizing that less staff will be more expensive because you're hiring your top salaries nevertheless.

Finally, establishing productive relationships with the other players in the process is vital. Since you'll likely have most or all of them represented on the commission anyway, those commissioners will be your initial and key links. They should always be important entry points to their constituents, although you'll undoubtedly deal with their associates as the commission does its normal work. Your staff will need to establish personal contact with the agencies/departments as well as with the necessary professional organizations, such as the state

prosecutors' association, victims' groups, correctional organizations, etc. Perhaps they can get staff on the agenda of workshops, conferences, training sessions, etc. It is important that the commission have faces and dispositions recognizable (preferably in a good way) to practitioners on whom it will depend for ideas and support. Commissions may need important statewide data to supplement their own from the courts and/or DOC. Prosecutors, law enforcement, and victims' groups may also supply useful stats and info. The state justice grant administrative office, while usually not on or linked to the commission, is an important possible data source as well as potential grant provider. So is your state Statistical Analysis Center, a criminal justice data repository and disseminator funded by the U.S. Bureau of Justice Statistics. As a source of grads and undergrads, universities are potentially important partners, as well as having faculty possibly interested in research using the commission's data.

It may be that, like families, dysfunctional sentencing commissions are dysfunctional in their own special ways, but good ones all seem alike. It borders on trite to say that good commissions have involved and respected commissioners balancing the desires of their constituents with the needs for commission consensus on the public interest; experienced, politically skilled but nonpartisan chairs and talented executive directors and staff; political support; adequate funding; and cooperative (if not necessarily happy) relationships with others in the sandbox (see above). Recognize, though, that being good doesn't guarantee long-term survival in the face of all the silliness that hits public policy. But that's what they look like. If you can't provide all or most of these from the start, then you should think twice about creating a commission. Again, no commission is better than a bad one (please interpret that sentence correctly).

In part VIII we'll turn to the basic commission structure. posted by Michael Connelly at 4:48 PM

PART VIII OF A SERIES. THE PREVIOUS PARTS DEALT WITH HOW TO CREATE A GOOD COMMISSION. THESE NEXT TWO PARTS DISCUSS THE STRUCTURE OF A GOOD COMMISSION.

Commission Organization and Structure

At the top of an organization chart for any commission is the constitutional body in which it is housed, the legislature, executive, or courts. Even "independent" commissions have to be placed somewhere in the executive budget and are ultimately beholden to their funders. Individual commissioners frequently overlook this in their agendas, but commissions as a whole do so at their own risk. That said, being a composite body with all three branches represented, a commission must also assert its independence, as noted earlier, to be of value even to those funders. A frequently delicate line, but an unavoidable one.

More concretely, the commission chair is clearly at the top of the commission's internal chart. Chairs are rarely given extensive power in commission enabling legislation, although some take it by Louis XIV precedent. In Maryland, they were legally given exclusive power over staff; in Wisconsin, they were not. Depending on how frequently a commission meets (or, more specifically, requires action), the chair may serve as an interim decision-maker on matters that can't wait until the next meeting. This can sometimes, of course, be contentious, but few organizations have ever found a better way around the problem.

In light of this paucity of thought to organizational matters in enabling legislation, some commissions adopt by-laws to outline things such as vice-chairs, permanent (standing) and ad hoc committees, the authority to call special meetings, disciplining absent members, etc. Other commissions like the ambiguity. By-laws help staff with their formal delineation of procedure, but staff sometimes like the ambiguity as well.

By-laws probably aren't as important in a commission's early days when the members are finding workable patterns for action through trial and error fitting their situations and contexts. Once these informal patterns are established, those commissions may feel that formalizing them will impede rather than enhance performance. The problem comes when, perhaps through a change of administration and some membership, the commission undergoes substantial transformation. Established by-laws, based on effective practice, will prevent these "new" commissions from having to reinvent several wheels.

The number of meetings that the commission should hold annually depends on several factors. In its beginning, commissioners may want to meet more regularly, perhaps biweekly or monthly. This can raise havoc with commissioners' schedules, of course, but it allows the commission a chance to focus, establish routines and priorities, and direct staff as to immediate wants and needs. After a few months, as staff begins assigned projects and committee work has started (and commissioners sicken of each other), the number of meetings will likely be cut back. Some states require a certain number of meetings per year (four in Maryland, including an annual meeting for direct public input, for example) while others leave it to the commissioners. No one to our knowledge has gone to jail for failure to have the mandated number of meetings, however, and it is not clear what the sentencing guidelines for that offense would be.

Commissions are strongly advised to establish permanent standing committees and to get them to work soon. If run properly, committees take the breadth of functions assigned to the commission and parcel them out for intensive consideration and later recommendation for action by the full commission. If the commission refuses to accept committee recommendations, however, frequently because of "my way" commissioners not on the committee, then much time and effort will be wasted recapitulating in the full body what the committee did. I strongly recommend usual deference to the committee work except in extraordinary circumstances that I really can't think of right now. What the committees should be, of course, may vary from commission to commission, but, since many functions are the same (oversight of guidelines, collection and reporting of sentencing data, dealing with the public, media, and policymakers), many of the committees are similar. Here are a few you will likely need to consider (perhaps with different names).

Sentencing Guidelines - If you have a structured sentencing system

with sentencing matrices or grids, offenses need to be classified into similar types (usually by nature of offense— violent, property, drug, sex, traffic, whatever--and by length and/or amount of statutory penalty), offenders need to be categorized (first-time, habitual, legislated penalty enhancers, etc.), and other necessary data and information need to be determined (victim participation in trial, type of counsel and disposition, demographics, reasons for guideline departures, and so on). If you are starting from scratch, this can mean complete examination and classification of your state's criminal code, formatting your statistical data system, and constant revision as feedback and new legislated offenses and penalties each year become known. Commissions can bog down forever in minutia over these issues. It's better to have a standing committee to get the grunt work done first.

It will be tempting to assign this work to legal practitioners (judge, prosecutor, defender), but you should consider a few others to avoid the "forest-tree" problem. And, the members should come from different parts of the state, if possible, to avoid domination of views from practitioners in one part, especially if that "part" conspicuously sentences differently. Further, the committee should be held to tough, tight timetables, or the arcane subjects could force even the smaller group into paralysis by analysis and seduction by one's own voice. The conversations in these committees can quickly turn into "I had a case once . . ." that will take hours to be finished. A whole afternoon wasted. (The same thing can happen when the full commission debates the committee's recommendations, so the chair will have to ride herd closely.) Keep in mind, these committees do yeoman's work for commissions, especially at the start, and should be carefully constructed to get maximum work done in the time available.

Other committees and considerations coming next. posted by Michael Connelly at 4:10 PM

PART IX OF A SERIES. IN PART VIII WE TALKED ABOUT COMMISSION STRUCTURING, INCLUDING STANDING COMMITTEES. THIS PART FINISHES THAT SECTION.

Data and Research

Since most of the commissioners will likely have legal training (meaning, they ran from math classes), it is sometimes hard to populate the sentencing statistics committee with people knowledgeable enough to contribute effectively. As with the overly-knowledgeable folks on Sentencing Guidelines, this can be a mixed blessing. Deference to statistical staff is far more likely, and good staff will respond well. Poor staff won't. However, the commission's data reports will have enough potential impact on practitioners and others to generate feedback to highlight problems with the data. Unfortunately, the feedback can go beyond locating inaccurate data. Good numbers will likely be challenged as well by those negatively affected by them, and commissions and this committee in particular need to be prepared. Staff should be sensitive to the political ramifications of their work and not report anything reactive (even under time pressure, such as a call from the governor's office for stats in ten minutes) without alerting at least the chair of this committee and/or the commission chair. The committee and commission, however, must resist the inevitable temptation to vet every single piece of data reported in a regular report, a request from the public, or a demand from a policymaker. Staff should be trusted and live up to that trust, or the commission will delay and deny information necessary in sentencing deliberations. In the long-term, this will hurt the commission's reputation with sentencing stakeholders.

This committee will not likely deal only with statistics. It will probably have to consider sharing of data about sentences, costs, offenders, etc., with other agencies and governments. It may also look at types of hardware and software for data systems, requests for data from academic researchers, public information act requests, and even subpoenas for evidence in trial, appeals, and sometimes civil proceedings against government officials. As mentioned, the average commissioner does not have this background. It is, therefore, often

helpful to establish a "workgroup" of people in the state criminal justice and information technology communities to provide advice and assistance. Whether this is a formal offshoot of the committee or merely folks "on call" to staff doesn't matter as much as having the expertise at hand.

Ultimately, the value of your sentencing commission to the state and public is not simply maintenance of formalistic sentencing grids. It's also the collecting and reporting of the data about the sentencing that will inform later deliberation and decisions by the commission, legislature, governor. Good data will not immunize a state from rash and opportunistic political acts, especially in criminal justice, but, without good data in which people are confident, the process is flying blind. That's not necessarily a fear for politicians who hope to be off the plane before it crashes, but it's hell for the taxpayers and citizens who have to pay the price when it does.

Public Outreach

At some point your commission is going to have to set down policies on public information act requests (formal form or not?, within the law, how much to charge for copying, staff time, etc.?, notify a judge if s/he has been the specific target of a request or not?), on who says what when the media come calling (staff on technical questions, chair on policy?), on whether to do public polling or focus groups, on newsletters, press releases, staff presentations, on dealing with public controversies or attacks on the commission itself. Again, the formal backgrounds of commissioners in public relations are likely to be limited, but most of them got appointed for political involvement and ties and should have more experience and expertise than with statistical data.

A prudent commission will be proactive in its public outreach. Unless the commission is on the front page of the newspaper (which will never happen if it's good news), the average citizen will never hear about it. But outreach to active community groups, churches, victims' and offenders' organizations, and specialized practitioner communities can alert them of the commission's existence and purpose and put names and faces from more pleasant and informative encounters in

their minds if/when hooey hits fan.

And, keep in mind that most of the data and information that a commission brings to the table is actually helpful to the parties "outreached." Practitioners usually benefit from knowing what the practice is. Citizens and interest groups benefit from accurate information beyond anecdote and/or their own unique experiences. And Lord knows the media benefit from access to good data, whether they actually use or report it appropriately or not.

Plus, what is there to fear from open channels to sources outside your commission? Yes, sometimes people find out embarrassing things or take data out of context mistakenly or mendaciously. But data and information that people really want usually come out at some point anyway. Is it better to have little or no control or input over its use and interpretation? And the commission can, of all things, actually learn from its interaction with the public, with groups, with the folks in the field doing the heavy lifting. Too much policy is made by authorities from on high who then beknightedly drop it on an unsuspecting population who could have told them all the things that then screw up if anyone had bothered to ask them. So ask them.

Yes, you'll get a lot of talk radio-like wisdom, but you'll also get some gems that may save you time, resources, and grief. And, cynically, you'll also get a buffer from charges that you're just another of those unresponsive, self-absorbed government agencies. No citizenry will ever come rushing to defend the life of a sentencing commission, but good, proactive public outreach can help prevent them rushing to tear it down.

Other Possible Committees

You'll likely have several things pop up that do require some intensive investigation and thought delegated to a few commissioners for later recommendation but that do not last long enough to require forming a permanent committee. And you may have particular needs that do require one but that other states don't have. However, as you plan your

commission's organization and structure, there are a few other areas that you might want to consider for standing committees.

Strategic Planning—Anyone who has been through this will groan, but careful early planning and then constant, consistent monitoring of performance will help keep your commission from straying into irrelevance or navel-gazing. The success of "problem-oriented policing" with its emphasis on Scanning, Analysis, Response, Assessment suggests a slightly different approach, "problem-oriented sentencing," you may want this committee to develop, for example.

Policy and Legislation—Depending on how long your legislature meets and how many sentencing-related bills it considers, you might want a "quick strike team" that can support or oppose bills between commission meetings. As a rule, it's easier to avoid controversy by ignoring bills until they pass. In practice, controversy is hard to ignore if you're doing fiscal impact statements on those bills or if the legislature wants you to report on race of offenders' birth mothers from other states or something similarly genius. But, given the pace and schedule of state legislatures, especially at the end of a session, getting the full commission for action is hard. A small committee for the purpose is much easier logistically, and should be populated by your most politically astute and/or influential commissioners.

Alternative Sentencing—While this can be part of Sentencing Guidelines, the intricacies and ramifications of alternative sentencing and its various means and programs may require more careful and specific consideration than the Sentencing Guidelines people can fit onto their loaded plates. If your state is seriously considering broadening its range of possible sanctions rather than just investigating occasional questions, your commission will likely benefit from a separate body here.

"Technocorrections"—Although legislatures, governors, courts, and commissions seem determined to ignore careful thought about the scope and consequences of our ongoing and unstoppable evolution of the use of surveillance, pharmaceutical, and genetic technologies for sanctions and behavior modification, the great hope of a democracy is that policymakers will consider world-shattering events

such as these in something other than a piecemeal basis. Should your commission be the first, you will definitely need this committee, supported by workgroups of experts and laypeople with sense, if they can be found.

"Costing Out"—A technique becoming popular in state and local government management these days is known as "costing out" of functions and programs. The method may vary, but the idea is to establish among relevant communities a set of program and policy outcome priorities which can be triaged as necessary according to available funding. Once the priorities are known, the costs and benefits associated with what is known to work to achieve those priorities are established. The priorities are then reexamined to determine if the net of gains and losses are truly what is desired. If appropriate, the priorities are revamped to reflect what can be done with available dollars. Clearly, since one purpose of a sentencing commission and structured sentencing is to monitor costs/benefits of sentencing decisions and policies, this technique would seem relevant to a pro-active commission and fits well with the "evidence-based practice" buzz that's currently in the air. Therefore, a committee to do regular costing out of sentencing impacts might do the taxpaying public a lot of good and rein in the opportunists in the policy community. It's not regularly done at this time, however, so, again, your commission could be the guinea pig if you want.

Clearly, organization and structure are more involved that this brief detailing can portray. Your commission will, of course, have contexts that will shape the roles of your chair and other commissioners, when and where it meets and acts, the discretion given to staff, what kinds of committees are necessary and how effective they are. As stated about the mission statement, the really important thing is to have a clear and consensual vision of what you want the commission to be and to have done a year, five years, ten years down the road and then to organize around that vision. Will the organization and operating procedures change? Sure, as the circumstances force and the vision shifts. But as long as you don't paralyze yourself with too much deliberation or

fracture over individual agendas (the two biggest threats to commission action), your commission's vision should fairly quickly guide you into patterns that will help you accomplish your basic functions and more. Which leads us to a more detailed look at some specific concerns you're probably going to have to deal with that we have yet to really cover.

Part X turns to specific issues and concerns you may have. posted by Michael Connelly at 5:01 PM

PART X OF A SERIES. THE NEXT TWO PARTS WILL ADDRESS POTENTIAL CONCERNS AND ISSUES THAT YOU MAY HAVE AS YOU DEVELOP AND INSTITUTE YOUR SENTENCING COMMISSION.

Concerns and Issues

The following is a series of "quick hits" at things that you will or should have to consider as you develop your commission's functions. They aren't in any particular order of importance or need. If they aren't relevant to your commission right now, don't worry about them (just be aware that they could pop up, though). But, as you organize and structure, it may help you to have a ready-made agenda like this from people who have been there before.

Ethics requirements—States generally have ethics commissions to handle questions of propriety about campaign contributions to and financial relationships of holders of public office with significant influence over public policy. While you may protest about your commission having significant influence over public policy, the strangely consistently humorless ethics officials believe it does. Therefore, they will require your commissioners to meet state ethics requirements. Since many if not most of your commissioners are already public officials, the requirements will affect only a few, but find out who they are and get the proper paperwork to them in time to avoid whatever fines they will otherwise have to pay for their usually thankless service.

Cooperation with other agencies—Broadly speaking, since you will find data and information from other related agencies useful and

possible grants through partnerships with them, you should be willing to cooperate with them toward (legal) ends they may have. Turf wars are not unknown, however, especially as agencies react to this new commission on the block. While it won't be true of all, be prepared for opposition from judges protecting judicial discretion and pomposity, corrections officials controlling (with varying success) their resources and bedspace, prosecutors and law enforcement suspecting liberalizing of sentences, victims groups fearing being shut out by an unhearing, mechanical process, defense attorneys and offenders groups suspecting conservatizing of sentences, criminal justice research agencies seeing a statistical center potentially competing for attention and funding, etc. In other words, from practically everyone in the process.

Since commissions have representation from virtually everyone, they make a logical place for centralization of much data and analysis (although limited in most states by staff size). That's both a virtue and a threat. Therefore, commissions and their staffs must prioritize their activities and make them known through their commission representatives. This will signal when cooperation is to be sought and not and on what grounds. Don't make too much of this, though. Usually cooperation is forthcoming, and noncooperation is usually passively aggressive, not something that involves bloodletting or, worse, headlines.

Listservs—One of the easiest ways to facilitate communication on a commission is to create an e-mail listserv hooking up all members. The problem is that it can be tempting to do public business this way (discuss issues, take votes, etc.). This generally violates your state's public information laws. So, to avoid problems, use listservs primarily as a means for staff to coordinate and disseminate information and materials (agendas, articles, notices). If you have things to distribute, send them to staff to get out. And never, never, never hit "reply all."

Worksheets—Theoretically, given a court system with good computerized records of sentences and their delivery and a corrections system with good computerized records of time served and how, a sentencing data system can be built through a merger of the relevant information from each system. Now compute in hardware and software of various ages, intentions, and compatibilities; data designed

for management, not policy, purposes; and a bureaucratic disinclination to let outsiders know "more than they need to" about how each system operates. Still theoretically possible? And this is assuming that each system exists in the real world, and important records aren't still on 3 X 5 cards somewhere. If you're fortunate enough to have 21st century, cooperative, compatible systems, you might get along without worksheets about the sentences filled out at the time of sentencing and sent to the commission for data entry, all umpteen thousand cases a year. On the other hand, if you are not lucky, then you'll need to either design a worksheet or pull in court sentencing documents and DOC documents for in-house coding prior to data entry.

Worksheets will need case numbers, names (all those used by the offender if possible), Social Security numbers (all those used by the offender if possible), dates of birth (all those . . . you get the idea), and other demographics. You may run into trouble on racial data (recorded by face-to-face observation by the recording agent or by self-reporting by the offender—both with major potential problems) since race and sentence are not to be formally linked. And tracking "Hispanic/Latino" apart from "black" and "white" is a giant headache, as is mixed race. Still, if your commission was formed in part to deal with racial disparity in sentencing, you have to get these data and just acknowledge the difficulties in the resulting reports.

Obviously you will need the basic information about the case(s): sentences broken down by all the particulars (including whether they are concurrent or consecutive to other sentences), all the factors required by the legislature or the commission to enhance the sentence (weapon use, vulnerable victim, amount stolen or of drug, etc.), the type of disposition process (trial by judge or jury, type of plea, type of defense counsel, etc.), a location for calculation of the applicable recommended guideline and actual sentence, with space for reasons for judicial departures. Some states also include space for information about victim knowledge about and participation in the process.

Who all gets copies will be up to your state, but obviously one will get sent to your commission. If not automated, you will need significant staff support for data entry, but the programs can be built on a small multitude of software systems. Storage is also a major consideration, including adequate security, space, and legal requirements. Three years is pretty common for public documents to be kept, but be sure to find out before you start shredding or burning. (Shredding is generally the method preferred by law and fire marshals, so find a reputable firm and get ready to pay.).

At some point in our increasingly paperless world, all worksheet information will be sent electronically directly to the commission and its data base, and more jobs will be downsized. Since commissions deal with aggregate numbers and not individual cases, this probably won't be a bad thing. Until that giant magnetic storm goes over commission offices.

Last couple of worksheet points. Accurate completion of worksheets requires a staff "helpline," a manual, and regular training (aka, more staff). Much can be put online, and videos and online training can be illustrative at relatively low cost. The commission should also decide how aggressively to pursue worksheet errors. The pursuit takes up valuable time, aggravates the judges, and, in the aggregate, is not likely to impact resulting data greatly (except for those 2000-year sentences). On the other hand, no pursuit may indicate a lack of concern. Clearly yet another job for the Sentencing Guidelines Committee.

Prison population projections—An important value of structured sentencing is your ability to use it to estimate future needs for prison bedspace. If you estimate well the offender intake data and fit each offender properly to his/her sentence cell in the grid and then figure an average for all offenders in that cell, and if you know well the time to be served, you will be able to predict how long incoming offenders each year will serve in prison. Added to the time to be served of your initial "stock" population already in prison and of the predicted number of offenders revoked from probation or parole, you will be able to project how many prison beds you will need each year. And how many new prisons. And how changes in sentences affecting the guidelines' cells in the grid will change bedspace and prison needs. Policymakers with an eye to not spending more than they have to will find this useful information. Policymakers with an eye to reelection above all may see their "get tough" legislation suddenly questioned and find this information a subversive plot and the commission

suddenly dispensable.

Clearly, these kinds of projections can make commissions vital players in effective sentencing policy and fiscal impact analyses, and, if that's what your commission is there for, go for it. Know these few things, however. You won't be the only game in town, and folks who don't like your projections may wheel out their "equal and opposite Ph.D.'s" with projections that magically fit what these folks want to do. And, you better be pretty accurate. More than one or two really bad projections will destroy commission credibility, perhaps on more than projections. Plus, remember "if you build it, they will revoke"—that is, projections of bedspace needs leading to more prison-building within a given time frame may lead to increased probation and parole revocations as space becomes available, filling the beds faster than projected. And, potentially worst of all, the technical wizardry and bells and whistles that go into projections can give policymakers a false sense of confidence in results. Staff may be asked for projections ten or even twenty years into the future. Weathermen have better luck with seven day forecasts. So, while projections can be very empowering for commissions, they truly are a "be careful what you wish for" situation. Some states literally create triangulated projections using the predictions of their commissions, DOCs, state budget office, and others. Not as empowering, and controversial when someone goes off on their own, but probably safer politically and statistically.

In part XI we will finish Concerns and Issues. Don't give up on us. We only have a couple of more parts to go after that.
posted by Michael Connelly at 5:42 AM

PART XI OF A SERIES. IN PART X WE STARTED LISTING SOME PREDICTABLE CONCERNS AND ISSUES THAT YOU MAY FACE AS YOU START AND CONTINUE A SENTENCING COMMISSION. THIS PART FINISHES THAT SECTION.

Criminal history access

Structured sentencing greatly depends on accurate information about the offender's criminal history. One of many dirty secrets about criminal justice data is that criminal history sucks. Dispositions just don't get linked back well to arrests or charges, and out-of-state convictions are worse. Efforts have improved things greatly from the old days and enriched several consulting firms (who, when you think of it, never really have had the incentive to get the system right), but problems are still there and real. Plus, juvenile records are frequently unavailable legally. Worst for you, commissions aren't normally considered "law enforcement" agencies legally authorized to have access to most criminal history data bases. The upshot of it all is that this is one of the most important areas for that "cooperation with other agencies" mentioned before. Figure out some good quid pro quos that you can trade off when you need data, or start on that legislative exemption for access now.

Internships and graduate students

When seeking quality employees at reasonable prices, one of the best sources is your friendly neighborhood college or university. Undergrads in criminal justice, poli sci, or public administration frequently need internships for graduation requirements, getting 3 hours credit for 120 hours of semester work as a rule, and there you are to help them out. While they can't rewrite the criminal code for you, they can do data entry (and learn way too much about how our justice process operates at the same time), staff meetings and direct sentencing questions, and the best ones can do some writing and analysis. Grad students usually insist on being paid (although volunteers are not unheard of), but the rate is only \$13-\$17/hour for 10-20 hours a week (and little in the way of benefits). This may make you feel a tad exploitative, especially if they are doing statistical or other heavy-duty analysis for you, but give them a good title, access to networking with commissioners and their staffs, and their names on any publications resulting from

anything they've worked on to add onto their resumes. Your conscience won't be quite as hard on you. An added benefit of both grads and undergrads is that they may have access to university resources (library, intranet resources, etc.) that you don't and can glom onto. Plus, with few exceptions, they reinvigorate a place with their interest and energy. That's a surprisingly valuable contribution once you've experienced it.

Recording and reporting names of judges

To ensure unreasoned responsiveness to every panic that makes local TV news, most states require their judges in criminal cases to be elected, some frequently, most for relatively long terms after an initial shorter appointment. As a result, come election time or the latest heinous crime, political opponents and/or ADHD reporters will love to cherrypick individual cases in which sentences questionable in their view were given. Now, some judicial decisions should be second- and third-guessed, and some judges do do excellent maniac impressions. But, in our experience, this selective use of judicial data does not present an accurate or fair view of most judges or the process. (If the average sentence for child sexual abuse is only 3 or 4 years, as is frequent and a legitimate outrage, maybe it's because it's hard to get charges or convictions at all against "Coach" or "Father So-and-So" or "Grandpa," not because judges or prosecutors are lunatics.) However, start a sentencing commission and watch people suddenly want to dig through your data (actually, have you do it) to find that eye-catching, ear-numbing case. Judges not unreasonably take unkindly to this treatment, although technically the information is public and available in county files with a little work to anyone. Judges, therefore, may object to your commission maintaining their names in your data base of sentences, and the commission may have to make and defend a decision either way.

You will probably find that some judges don't care. Those from small jurisdictions tend to be highly unsympathetic since they have to deal with a public that every week at the grocery store knows every local case that goes to court. One-judge counties are particularly easy to track in your data base. On the other hand, in large, usually urban jurisdictions with severe case pressures and local contexts that favor deals for lower sentences, the judges may opt for

anonymity, especially since local TV and a major newspaper or two are likely in the city with them. There's no good answer here. The public has a right to know, and you're probably bound by state law appropriately. But the judges have a right to expect buffering from your commission, too, against unfair use of your data. Pennsylvania made a conscious decision to report, Maryland one not to (although it has allowed access to its files instead and notifies the judges studied). In both cases, your commission should vocally warn users of its data against its misuse and speak out strongly when it happens.

Pursuit of grants

Like any government agency, your commission will likely have need for more funding. An obvious but very difficult source of supplementary funds jumping from the lips of everyone who has never had to do it is grants. Why is it hard? Well, the feds have never been that interested in sentencing research (it's only the basis of everything the criminal justice system ends up doing), so you'll have to be creative to devise the necessary link to the topics in their RFPs (request for proposal). And while some foundations are possibilities, they are hard-pressed for funds these days, too, and usually are interested more in children and families or juvenile justice than adult sentencing. That means tying your requests to topics like reentry, child abuse, or certifications for adult sentencing, which may tend to be peripheral to your commission. On top of all that, foundations often have goals identifiable with political sides, something a nonpartisan commission usually avoids, wisely. Still, this is an area in which those cooperative relationships with other agencies, like your Statistical Analysis Center or Office of Juvenile Justice, may pay off, literally, through inventive partnerships. Then all you have to do is figure how to divvy up the new funding and staff. Easy. (And, if you can tie it to "Homeland Security," more the better.)

Performance measurement

It may sound odd to think of performance measurement for a nonpartisan body that basically sits around making recommendations about sentences. But in this heyday of state government "managing for results," no one is immune. They might let you slide with "number of reports published" or "worksheet training sessions delivered," but this actually gives your commission a nice chance to think through its own definition of success and what it wants to accomplish. And if you put together that mission statement, you should be able to derive objectives from which real actions are possible. These actions presumably have goals, which can then be observed for achievement.

The problem, of course, is age-old. Policymakers, and their staffs straight from an MPA program where easy performance measurement and coherent data bases are givens, will examine the measures for change in a preferred direction one year to the next. This has led to unbelievable game-playing in the four-plus decades "performance measurement" has been extolled as the savior of public management and budgeting. There has yet to be produced reason to believe any given iteration will reduce the games and produce better results (some see in this the definition of insanity, but we will be kind). Done correctly, and not abused by staffers shaking trees for budget cuts or promotions, measures can help track performance, signaling changes that need attention and the possibility of new directions. Your commission will likely have to play the game at some point. If it's proactive, it will have more say over how it's judged itself.

In the next part we'll tell you why your commission will fail and then we conclude.

Sounds like fun, right?
posted by Michael Connelly at 3:29 PM

PART XII OF A SERIES. IN THIS CONCLUSION OF "SO YOU WANT TO START A SENTENCING COMMISSION?" WE DISCUSS WHY YOUR COMMISSION WILL FAIL. THAT'S RIGHT, "WILL FAIL." SOUND FUN? THANKS FOR STAYING WITH US FOR THE WHOLE THING. SEND US ANY COMMENTS OR QUESTIONS THAT WE STILL NEED TO ADDRESS.

Why Your Commission Will Fail

Okay, you've gotten this far. You're as well prepared for starting a successful commission as most complete novices could be. And, by tapping into the commission "fraternity," you'll have expertise and experience at your call virtually any time. Your odds of establishing a long-term agency are actually pretty good. But not 100%. Your commission could still fail, in a year or a decade. Why? Your state may be creative in how it does it, but some possible reasons for failure are predictable (and historical). We've mentioned them in passing for the most part, but let's systematize them so you'll have no defense for not being prepared.

- * The commission failed to establish cooperative, systematic relationships and lost the resulting battle over turf and/or funding.
- * It basically sat there, dithering year after year, not accomplishing much, happily classifying new offenses, issuing an innocuous report or two a year, not really having much of an impact. In other words, it failed to establish meaningful legitimacy and credibility in state policy. Come tough time or a periodic fad for "efficiency," the commission gets reexamined, the examiners say "Wuhhh?," and, snip, it becomes easy proof of the tough work keeping democracy accountable.
- * It got too tied to a particular faction in a policy controversy, politicizing itself and losing whatever legitimacy and credibility it had built up. As noted before, the faction may even be the winner in the controversy, but it may need to (re)establish its own legitimacy and credibility. Think it will hold tightly to a compromised commission?
- * It remained too neutral in a policy controversy, aggravating every side that wanted its support (see Cambodia, 1970s). Yes, it's damned if you do, damned if you don't. It's also reality and reaffirms the need for

politically astute chairs and members, who may nevertheless not be enough.

- * It proposed or recommended sentencing policy that ran afoul of public and/or demagogic wants and needs. Sometimes that famous legitimacy/credibility will provide enough surplus for survival, but good commissions have been washed aside in the face of public panic attacks.
- * It was created by an administration or party in power that is no longer there. The newcomers may lack the same interest or investment, and, ironically, if the commission has been a conspicuous success of a particularly hated former administration, it may be deliberately removed, like a splinter or a wart. Reaching out to others in advance can broaden a constituency and is strongly recommended. But don't count on it to overcome the potential here. If the commission can get through a couple of new administrations or legislative party changes, it's probably good to go, but don't buy stationery in bulk.
- * And then, one day, out of the blue, without word or warning, your commission may hear that a provision slipped into an authorization or budget bill on the last day passed without discussion and abolished your commission or left it without funding.

Why did this happen? Your commission hacked off the wrong individual. The governor maybe, or his chief of staff, a legislative chair, maybe even a legislator on your own commission who got voted down once too often. Maybe your prison population projection shot down a favored bill, maybe the wrong judge got defended. Maybe your executive director rubbed too many people the wrong way. Maybe it was Tuesday. You may never know. All this speaks to the following: Take nothing for granted, ever. Pay attention and be prepared to respond fast. Will that save the commission? Did it save the commissions that suffered the lunacy listed above? Some it did, some it didn't. But it does give you a better chance.

Conclusion

Sentencing commissions have been around long enough now to have established themselves as part of the state government and criminal justice landscape. Not having one doesn't stop a state from having good policy and an effective process, but having one brings more light and knowledge to both. As we noted above, because of this dispensability, commissions often live on an edge of survival, but enough history exists to learn from. You should be free to create your own particular mistakes now.

Good luck to you and remember—you will be part of a fraternity that helps each other. Anything helpful you got from this, please pay it forward.

posted by Michael Connelly at 5:42 PM

POSTSCRIPT - GOALS OF SENTENCING COMMISSIONS

Going through some papers from a year or so back, ran across a table I drew up after going through commission websites and examining their stated goals. Not the least bit scientific, but here's what I found for the 19 commissions I looked at. If you looked at how frequently they were mentioned as explicit goals and the order in which they were listed, you would hopefully come up with a list of goals in their priority something like this:

Public Safety/Emphasis on Violent and Career Offenders
Disparity/Equity
Proportionality
Truth in Sentencing
Resource Availability
Alternative Sentencing
Judicial Discretion
Statement of Public Values
Public Accountability

Rehabilitation Victim Impact Crime Reduction Prison Overcrowding

I wouldn't bet much on the exactitude here, but thought you might be interested. I should never start cleaning out files.